

Appl. No. 09/586,270  
Atty. Docket No. 7533  
Amdt. dated September 10, 2003  
Reply to Office Action of May 13, 2003  
Customer No. 27752

#### REMARKS

Claims 12, 14-25 are pending in the present application. No additional claims fee is believed to be due.

Pending Claim 14 has been amended to correct the erroneous claim dependency created when Claim 13 was previously corrected. Withdrawn Claims 26-45 have been amended to correct the claim dependencies created by correction of the claim numbering error in the original claims.

Claims 26-45 have been withdrawn as a result of an earlier restriction requirement.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

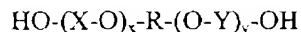
#### Summary of the Invention

The above-identified application relates to compositions for softening cellulosic structures comprising and effective amount of a softening active ingredient, a vehicle, an electrolyte, and a bilayer disrupter. The electrolyte and the bilayer disrupter cooperate to cause the viscosity of said composition to be less than the viscosity of a bicomponent dispersion of the softening active ingredient in the vehicle.

#### Rejection Under 35 USC 102 Over Jenny

Claims 12, 14-21, and 23-25 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,753,079, issued to Jenny et al., on May 19, 1998 (hereinafter referred to as "Jenny"). A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), MPEP §2131. Applicants respectfully traverse this rejection for the reason that Jenny does not teach or disclose the bilayer disrupter of the present invention.

Jenny relates to a process for producing paper forming an aqueous suspension of fibers into a sheet and drying the sheet, where the aqueous suspension comprises a quaternary ammonium component and a nonionic component having the presented formula (1):



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where X and Y may be ethylene, propylene or butylene groups, R is a straight, cyclic or branched alkylene group containing 4 to 12 carbon atoms, and x and y can each range from 0 to 40 where the sum of  $x + y$  also ranges from 0 to 40. These compounds are known as diols and diol alkoxylates. The diols / diol alkoxylates are added to the quaternary ammonium compound to either improve debonding and/or softening properties (Col 2, Line 66), or form a phase-stable, water-dispersible formulation (Col 13, Line 39).

Applicants submit that the diol/diol alkoxylate compounds represented by formula (1) do not teach the bilayer disrupters of the present invention. The bilayer disrupter of the invention is an organic material that, when mixed with a dispersion of the softening active ingredient, is compatible with at least one of the vehicle or the active and causes a reduction of the viscosity of the dispersion. (Specification Page 19, Line 28) As can be seen from the formula (1), the diols and diol alkoxylates of Jenny do not have both lipophilic and hydrophilic character to have surface active properties to act on the bilayer structure to reduce the viscosity. The TMPD and ethoxylated TMPD exemplified in Jenny would dissolve in the aqueous phase and not reside in the pallside layer of the dispersion and therefore would increase the viscosity of the continuous water phase and as a result the overall composition, not reduce the viscosity of the dispersion as do the bilayer disrupters of the present invention. In fact, Jenny teaches that other components, not the diol or diol alkoxylate, may optionally be added to the composition therein to lower the viscosity. (Jenny, Col. 13, Line 34) While Jenny teaches that other nonionic compounds may be used to reduce the viscosity of the softening dispersion, it does not teach what these other nonionic compounds are.

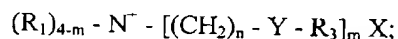
Rejection Under 35 USC 103(a) Over Jenny in view of Hutcheson or Fereshtekhhou

Claims 22 has been rejected under 35 USC 103(a) as being unpatentable over Jenny in view of U.S. Patent No. 5,417,753, issued to Hutcheson on May 23, 1995 (hereinafter "Hutcheson") or in view of U.S. Patent No. 5,527,560, issued to Fereshtekhhou et al. on June 18, 1996 (hereinafter "Fereshtekhhou"). To establish a *prima facie* case of obviousness under 35 U.S.C. §103(a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success of obtaining the claimed invention based upon the references relied upon by the Examiner. Third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Vacck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP §2142. Applicants respectfully traverse this rejection for the reason that the combined teachings of Jenny, Hutcheson and Fereshtekhhou does not establish

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a *prima facie* case of obviousness because it does not teach or suggest all of Applicants' claim limitations nor does it provide any suggestion or motivation to modify or combine the references to obtain the present invention. Therefore, Applicants' content that the claimed invention is unobvious and that the rejection should be withdrawn.

Claim 22 relates to compositions for softening cellulosic structures comprising and effective amount of a softening active ingredient comprises a quaternary ammonium compound having the formula (2):



water as a vehicle, from about 0.1% to about 20% of an electrolyte comprising a salt selected from the group consisting of chloride salts of sodium, calcium, and magnesium; and a bilayer disrupter. The electrolyte and the bilayer disrupter cooperate to cause the viscosity of said composition to be less than the viscosity of a bicomponent dispersion of the softening active ingredient in the vehicle.

As discussed above Jenny teaches a paper softening composition comprising a quaternary ammonium compound, a vehicle, an electrolyte, but not the bilayer disrupter of the present invention. Hutcheson teaches paper making slurries comprising mono- and distearamides of aminoethanolamines to increase opaqueness, brightness and water repellancy in paper. The slurries also comprise a surfactant and a salt viscosity control agent. Fereshtekhou teaches softening tissue paper products with nonionic softeners. Neither Hutcheson nor Fereshtekhou teach or suggest the use of dispersions of quaternary ammonium compounds.

It is well settled that the Examiner cannot pick and choose from any one reference only so much of it as will to recreated the claimed invention based on the hindsight of the Appellants' invention. In re Wesslau, (Fed. Cir. 1965). Rather, the Examiner has the burden to show some teaching or suggestion in the references to support their use as in the present invention. Smith Kline Diagnostics, inc. v. Helena Laboratories Corp., 8 USPQ2d 1468, 1475 (Fed. Cir. 1988). There must be a suggestion or teaching that the claimed novel form could or should be prepared. In re Cofer, 148 USPQ 268 (CCPA 1966). Applicants respectfully submit that there is no teaching or suggestion to use of the nonionic softeners in Fereshtekhou, or the surfactant used with stearamides of aminoethanolamine in water resistant papers, in softening dispersions comprising the highly hydrophilic, quaternary ammonium compound of formula (2). Therefore, Applicants' content that the claimed invention is unobvious and that the rejection should be withdrawn.

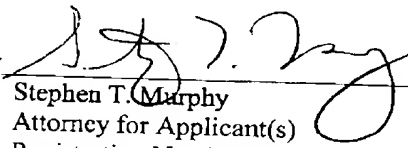
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Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. §§102(b) and 103(a). Early and favorable action in the case is respectfully requested.

Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 12, and 14-25.

Respectfully submitted,  
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